

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

November 17, 2004

A meeting of the Board of Environmental Protection was held on Wednesday, November 17, 2004, at the Augusta Civic Center, Augusta, Maine. Richard Wardwell, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

Board: Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Richard Wardwell, Jean T. Wilkinson, and Nancy Ziegler

<u>Staff:</u>	Bureau of Land and Water Quality	Mike Mullen
	Bureau of Land and Water Quality	Mark Stebbins
	Bureau of Land and Water Quality	Dana Murch

Others: David P. Littell, Deputy Commissioner
Deborah Garrett, Office of the Commissioner
Jerry Reid, Assistant Attorney General
Cynthia Bertocci, Executive Analyst
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 1:00 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Deputy Commissioner Littell reported the following:

Casco Bay: The Department is seeking Federal designation of no discharge for Casco Bay. This would prohibit the discharge of sanitary wastewater (black water) from all types of boats, passenger, recreational boating, shell fishing or fishing. The goal is to have this designation in place by the next boating, fishing season.

Board member Nancy Ziegler asked how this compares with the vessel rule currently open for public comment and why this designation initiative is moving forward.

Deputy Commissioner explained that the Department does not have authority to regulate the discharge of sewage(black water) from off-shore sources only gray water, therefore the federal designation would accomplish eliminating pollution to Casco Bay. The vessel rule is applicable to only those passenger vessels of a specific size.

Benton Falls: The Department of Environmental Protection and Department of Marine Resources are working together to address recent eel kills at this hydro dam on the Sebastacook River. The Benton Falls facility entered into a voluntary agreement with the Dept. of Marine Resources eliminating nighttime operation and the installation of eel passage. The Company was not able to find an adequate design for eel passage and also resumed night operation after only a few nights despite their agreement with DMR. Follow-up action by the DEP and DMR was taken in the form of a letter advising of future enforcement action. A Kennebec Watershed wide agreement addressing down stream eel passage or modification of operational licenses to protect the eel migration is being pursued by DMR to have in-place prior to next year's eel migration.

Board member Ernest Hilton asked how many small dams are being operated on Maine's lakes and rivers.

Dana Murch advised that there are currently two working dams with devices for eel passage and approximately 100 total working dams.

Chair Richard Wardwell asked why eel kills haven't been an issue in the past.

Mr. Murch explained that historically the public has not had an understanding of eels. Educational efforts have promoted an understanding of eel migration and levels of eel mortality have been brought into focus in association with dam operation and dam relicensing. Eel passage devices are not well developed and research related to design is underway.

Board member Ernest Hilton asked if large-scale eel mortality was a new occurrence

Mr. Murch explained that as education about eels in general grows, so does the concern for eel mortality at dams. He also noted that eels migrate to sea to spawn once in their lifecycle.

Backyard Burning: The Department is working with other states (New Hampshire and Vermont) in an education and outreach effort dealing with the backyard burning of trash. A backyard burn barrel has the potential to emit levels of dioxin found at a municipal incinerator handling a much larger volume of trash. This initiative can potentially alleviate pollution from transport into Maine.

Wolman Steel: The Department has begun the clean-up at the Wolman Steel site in Waterville. It is anticipated that this activity will occur over the next 5 to 6 weeks.

Deputy Commissioner Littell announced that Deb Garrett will sit at the head table representing the Commissioner's office during discussions associated with the Use Attainability of Ragged and Seboomook Lakes.

Question:

Board member Irving Faunce asked for an update on the fee stakeholder group.

Mr. Littell informed Board members that the stakeholder group will reconvene near the end of November or in early December to provide feedback to the Department on its proposal. The stakeholder group will also be reviewing and commenting on the internal reorganization, reassignment and reallocation of resources proposed to meet shortfalls.

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| B. CHAIRMAN'S COMMENTS: | None |
| C. EXECUTIVE ANALYST COMMENTS: | None |
| D. BOARD CALENDAR: | Reviewed |
| E. DEPARTMENTAL ORDERS: | Reviewed |
| F. EXECUTIVE SESSION: | None |

II CONSENT AGENDA ITEMS

The Board voted (8-0-1-0) to approve as presented, agenda item 1

Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Richard Wardwell, and Jean T. Wilkinson voted to support the motion. Board member Nancy Ziegler abstained.

1. BEP MINUTES – September 16, 2004 (approval)

The Board voted (9-0-0-0) to approve as presented, agenda items 2 and 3.

Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Richard Wardwell, Jean T. Wilkinson, and Nancy Ziegler voted to support the motion.

2. BEP MINUTES – October 7, 2004 (approval)
3. BEP MINUTES – October 21, 2004 (approval)

The Board voted (9-0-0-0) to approve as presented agenda items 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 15.

Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Faunce, Virginia Plummer, Matt Scott, Richard Wardwell, Jean T. Wilkinson, and Nancy Ziegler voted to support the motion.

4. JOHN MULHOLLAND, Augusta – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
5. STEVEN A. McGEE and STEVE McGEE CONSTRUCTION LLC, Augusta – Administrative Consent Agreement and Enforcement Order (BLWQ - Land)
6. STEVE McGEE and STEVE McGEE CONSTRUCTION LLC, Augusta – Administrative Consent Agreement (BLWQ – Land)
7. SABATTUS SCHOOL DISTRICT and ARTHUR C. DUDLEY CONTRACTOR/BUILDER, INC., and STEVE McGEE CONSTRUCTION, LLC, Sabattus – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
8. WINTHROP STAPLES, SR., Wiscasset – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)

9. NORTHERN MAINE COMMERCIAL PROPERTIES LLC, Presque Isle – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
10. BRIAN ESTABROOK and KAREN ESTABROOK, Raymond – Administrative Consent Agreement (BLWQ – Land)
11. GERALD MACKENZIE, Sidney – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
12. WILFORD MARTIN, Nobleboro – Administrative Consent Agreement
13. HERVACHON BUILDERS, LLC, Jefferson – Administrative Consent Agreement
15. D.A.WILSON & COMPANY, LLC, Greenwood – Administrative Consent Agreement and Enforcement Order (BRWM)

The Board voted (3-6-0-0) on a motion to reconsider its previous approval of consent agenda item #5, Steven A. McGee and Steve McGee Construction L.L.C. **Motion Failed.**

Board members Nancy Anderson, Virginia Plummer and Matt Scott voted to support the motion. Board members Irving Faunce, Donald Guimond, Ernest Hilton, Richard Wardwell, Jean T. Wilkinson and Nancy Ziegler voted opposed.

The Board voted (9-0-0-0) to approve as presented agenda item 14

14. PORTLAND WATER DISTRICT, Portland – Administrative Consent Agreement and Enforcement Order (BLWQ – Water)
Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Richard Wardwell, Jean T. Wilkinson, and Nancy Ziegler voted to support the motion. .

III. Regular Agenda

1. USE ATTAINABILITY ANALYSIS FOR RAGGED & SEBOOMOOK LAKES / GLHA HYDRO STORAGE PROJECT (decision)
Staff: Dana Murch, Bureau of Land and Water Quality

The Board voted (9-0-0-0) on a motion to approve the draft order recommending that the Legislature adopt a subcategory of designated use for Ragged and Seboomook Lakes, allowing annual drawdowns of up to 20 feet for Ragged Lake and 17 feet for Seboomook Lake. The vote was taken pursuant to Title 38, M.R.S.A. Section 464(2-A) and 06-096 CMR Chapter 30. The motion included the following modifications to the order:

(Finding #6, page 7) 6. CURENT ATTAINMENT OF DESIGNATED USES
The Department has determined, ~~in keeping with the Board's July 15, 2004 decision regarding Flagstaff Lake,~~ that the historic...

(Conclusion #5, page 16) The construction and operation of Seboomook Dam are human caused...

Board members Nancy Anderson, Irving Faunce, Don Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Richard Wardwell, Jean T. Wilkinson and Nancy Ziegler voted to support the motion.

Next Regular Board Meeting, Thursday, December 2, 2004 – Holiday Inn / Ground Round

BOARD OF ENVIRONMENTAL PROTECTION
Augusta Civic Center, Augusta at 09:00 a.m.
Wednesday -- November 17 2004

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

II. CONSENT AGENDA ITEMS

- 005 1. BEP MINUTES – September 16, 2004 (approval)
- 011 2. BEP MINUTES – October 7, 2004 (approval)
- 015 3. BEP MINUTES – October 21, 2004 (approval)
- 019 4. JOHN MULHOLLAND, Augusta – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
- 023 5. STEVEN A. McGEE and STEVE McGEE CONSTRUCTION LLC, Augusta – Administrative Consent Agreement and Enforcement Order (BLWQ - Land)
- 031 6. STEVE McGEE and STEVE McGEE CONSTRUCTION LLC, Augusta – Administrative Consent Agreement (BLWQ – Land)
- 035 7. SABATTUS SCHOOL DISTRICT and ARTHUR C. DUDLEY CONTRACTOR/BUILDER, INC., and STEVE McGEE CONSTRUCTION, LLC, Sabattus – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
- 041 8. WINTHROP STAPLES, SR., Wiscasset – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
- 045 9. NORTHERN MAINE COMMERCIAL PROPERTIES LLC, Presque Isle – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
- 049 10. BRIAN ESTABROOK and KAREN ESTABROOK, Raymond – Administrative Consent Agreement (BLWQ – Land)
- 053 11. GERALD MACKENZIE, Sidney – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
- 057 12. WILFORD MARTIN, Nobleboro – Administrative Consent Agreement
- 061 13. HERVACHON BUILDERS, LLC, Jefferson – Administrative Consent Agreement
- 065 14. PORTLAND WATER DISTRICT, Portland – Administrative Consent Agreement and Enforcement Order (BLWQ – Water)
- 085 15. D.A.WILSON & COMPANY, LLC, Greenwood – Administrative Consent Agreement and Enforcement Order (BRWM)

III REGULAR AGENDA ITEMS

- 103 1. USE ATTAINABILITY ANALYSIS FOR RAGGED & SEBOOMOOK LAKES / GLHA HYDRO STROAGE PROJECT (decision)
Staff: Dana P. Murch, Bureau of Land and Water Quality

Next Regular Board Meeting – Thursday, December 2, 2004 – Holiday Inn / Ground Round, Augusta